

TOWN PLANNING BOARD

TPB Paper No. 10974

For Consideration by
the Town Planning Board on 12.7.2024

REVIEW OF APPLICATION NO. A/NE-TK/793
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House (New Territories Exempted House (NTEH) - Small House)
in “Green Belt” Zone

Lot 391 S.A in D.D. 28, Lung Mei, Tai Po

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1. Background

- 1.1 On 30.1.2024, the applicant, Mr. LEE Mang Kan, sought planning permission to build a proposed NTEH (Small House) at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within “Green Belt” (“GB”) zone on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 15.3.2024, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from this planning intention; and
 - (b) land was still available within the “Village Type Development” (“V”) zone of Lung Mei and Tai Mei Tuk which was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TK/793 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 15.3.2024 (Annex B)
 - (c) Secretary of the Board’s letter dated 5.4.2024 (Annex C)

2. Application for Review

On 24.4.2024, the applicant applied under section 17(1) of the Ordinance for a review of RNTPC’s decision to reject the application (**Annex D**).

3. **Justifications from the Applicant**

3.1 The justifications put forth by the applicant in support of the review application are detailed at **Annex D** as summarized below:

- (a) subsequent to the previous approval for Small House development, the Site has been paved, and drains and pipes have been laid;
- (b) the Site is situated among a cluster of NTEHs. Similar applications for Small House developments were approved in the surrounding areas. Taking into account the actual site condition, adverse landscape impact arising from the proposed Small House development is not anticipated. The proposed development is not incompatible with the surrounding areas. Approving the subject application will not deviate from the planning intention of the “GB” zone;
- (c) the actual land available for Small House development within the “V” zone of Lung Mei and Tai Mei Tuk is less than that estimated by the Planning Department (PlanD) due to various site constraints (including (i) proximity to roads, Tsz Tong and graves; (ii) encroachment onto existing village access or sitting-out area; and (iii) areas occupied by trees or garden area of existing Small House developments) and is insufficient to meet the Small House demand of the indigenous villagers; and
- (d) the subject application was considered by the RNTPC together with a similar application (No. A/NE-TK/792) for a free-standing Small House at the same meeting. Different from this similar case, the proposed Small House development is surrounded by a number of existing Small House developments.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1 to R-4)

4.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by the RNTPC are set out in paragraphs 9.1 and 9.2 of **Annex A**. The change in the situation of the Site since then is detailed in paragraph 4.2(a).

4.2 The Site is:

- (a) currently partly paved with concrete and partly occupied by construction materials and tractors (**Plan R-4**). Drains have been laid along its western and northern peripheries (Photo 1 on **Plan R-4**);
- (b) entirely within the village ‘environs’ (‘VE’) of Lung Mei and Tai Mei Tuk (**Plan R-1**); and
- (c) accessible via a local track and Tai Po Lung Mei Road connecting to Ting Kok Road (**Plan R-1**).

- 4.3 To the immediate northeast, east, south and west of the Site mainly comprise existing Small Houses and approved Small House developments with works in progress (**Plan R-4**). To its immediate northwest is the site of a similar application No. A/NE-TK/664 approved by the RNTPC on 22.3.2019 with no valid Small House grant application being processed by LandsD (**Plan R-2a**). The village proper of Lung Mei and Tai Mei Tuk is about 10m to the southeast (**Plan R-2a**). To its further north and west are dense woodland within the “GB” zone (**Plan R-3**).

Planning Intention

- 4.4 There has been no change in the planning intention of the subject “GB” zone as mentioned in paragraph 10 of **Annex A**, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

Assessment Criteria

- 4.5 The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II** of **Annex A**.

Town Planning Board Guidelines

- 4.6 Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are at **Appendix III** of **Annex A**.

Previous Applications

- 4.7 The Site is the subject of two previous applications (No. A/NE-TK/243 and 476) (**Plan R-2a**) submitted by different applicants for the same use, which were approved by the RNTPC in 2007 and 2013 respectively. The previous applications were approved mainly on considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the ‘VE’ and there was a general shortage of land to meet the demand for Small House development within the “V” zone at the time of consideration; complying with TPB PG-No. 10; no significant adverse impacts on the surrounding areas; and being the subject of previously approved application (for No. A/NE-TK/476). The validity of the planning permission granted under the last application (No. A/NE-TK/476) was extended once until 8.11.2021, and the planning permission lapsed on 9.11.2021. Compared with the last previous application, the major development parameters and Small House footprint under the subject application are the same.
- 4.8 Details of the previous applications are summarized at **Appendix IV** of **Annex A** and their locations are shown on **Plans R-1** and **R-2a**.

Similar Applications

- 4.9 When the s.16 application was considered by the RNTPC on 15.3.2024, there were 27 similar applications involving 17 sites for Small House development in the vicinity of the Site, including 20 falling wholly within “GB” zone and seven straddling both “GB” and “V” zones, since the first promulgation of the Interim Criteria in 2000. 18 of them were approved and the remaining nine were rejected. At the same meeting on 15.3.2024, another similar application (No. A/NE-TK/792) was considered by the RNTPC and was rejected. Since then, the number of similar applications has remained unchanged.
- 4.10 Among the 18 approved applications, 15 (No. A/NE-TK/211, 213, 226, 275-278, 327-328, 344, 375, 392-393, 425 and 473) were approved between 2006 and 2013 before the Board’s formal adoption of a more cautious approach in considering applications for Small House development since August 2015. They were approved mainly on considerations similar to those set out in paragraph 4.7 above. Three applications (No. A/NE-TK/580, 618 and 664) with previous planning permission lapsed were approved between 2016 and 2019 after the Board’s formal adoption of a more cautious approach. The site of Application No. A/NE-TK/580 was situated in between two village houses and about 83% of it falls within the “V” zone (**Plan R-2a**). This application was approved mainly on sympathetic consideration of being the subject of a previously approved application submitted by the same applicant; being an infill development; complying with TPB-PG No. 10; and that the processing of the concerned Small House grant was at an advance stage. The sites of Applications No. A/NE-TK/618 and 664 situated entirely outside the “V” zone (**Plan R-2a**) and were approved mainly on sympathetic consideration that they were the subject of previously approved applications submitted by the same applicant, and the processing of the relevant Small House grants was considered to be at an advance stage.
- 4.11 For Applications No. A/NE-TK/258, 263, 273-274, 279, 559¹, 570-571², 660 and 792, they were rejected by the RNTPC or the Board on review between 2009 and 2024 mainly on the grounds of not being in line with the planning intention of the “GB” zone and TPB PG-No. 10; and/or setting of undesirable precedent for similar applications within the “GB” zone. The latter five applications (No. A/NE-TK/559, 570-571, 660 and 792) were also rejected on the grounds that land was still available within the “V” zone at the time of consideration; and/or the proposed development would cause adverse landscape impacts on the surrounding areas (for Applications No. A/NE-TK/559 and 660).
- 4.12 Details of the similar applications are summarized at **Annex E** and their locations are shown on **Plan R-2a**.
- 4.13 There is another review application for a proposed house (NTEH – Small House) (No. A/NE-TK/792) within the same “GB” zone in the vicinity of the Site, which will be considered by the Board at this meeting.

¹ Application No. A/NE-TK/559 is the subject of Town Planning Appeal lodged by the applicant in 2016. The said appeal was dismissed by the Town Planning Appeal Board on 22.3.2017.

² Applications No. A/NE-TK/570 and 571 are the subject of Town Planning Appeal lodged by the applicants in 2016. The appeals were dismissed by the Town Planning Appeal Board on 17.10.2017.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are set out in paragraph 11 and **Appendix VI** of **Annex A**. Their advisory comments, if any, are at **Appendix VII** of **Annex A** and recapped at **Annex F**.
- 5.2 For the review application, relevant government departments have been further consulted and they maintained their previous comments on the application. Updated comments from the District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) on the review application are as follows:

Land Administration

5.2.1 Comments of DLO/TP, LandsD:

- (a) there is no valid Small House grant application covering the Site; and
- (b) previous comments are still valid except that the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 39 (37 at the time of consideration of the s.16 application), while the 10-year Small House demand forecast is 212 (the same at the time of consideration of the s.16 application).

5.2.2 In view of the latest comments of DLO/TP of LandsD, the revised assessment of the land required and land available for Small House development (stated in paragraph 11.1(3) of **Annex A**) is as follows:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand forecast)?		✓	<u>Land Required</u> - Land required to meet Small House demand in Lung Mei and Tai Mei Tuk: about 6.28 ha (equivalent to 251 Small House sites). The outstanding Small House applications are 39 ³ while the 10-year Small House demand forecast is 212.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the Lung Mei and Tai Mei Tuk: about 1.64 ha (equivalent to about 65 Small House sites) (Plan R-2b).

³ Among the 39 outstanding Small House applications in Lung Mei and Tai Mei Tuk, 30 fall within the “V” zone and nine straddle or fall outside the “V” zone. For cases straddling or falling outside the “V” zone, three of them has obtained valid planning approvals from the Board.

6. Public Comment Received During Statutory Publication Period

- 6.1 On 3.5.2024, the review application was published for public inspection. During the statutory public inspection period, a public comment was received from an individual (**Annex G**) raising objection to the application mainly on the grounds that land was still available for Small House development within the “V” zone of Lung Mei and Tai Mei Tuk.
- 6.2 No public comment was received at the s.16 application stage.

7. Planning Considerations and Assessments

- 7.1 The subject s.16 application was rejected by the RNTPC on 15.3.2024 mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone, and land was still available within the “V” zone of Lung Mei and Tai Mei Tuk for Small House development. There has been no material change in the planning circumstances since the consideration of the s.16 application by the RNTPC in March 2024. The planning considerations and assessments as set out in paragraph 13 of **Annex A** remain valid.
- 7.2 In support of the review application, the applicant has submitted a written representation claiming that (i) the Site has been paved with drains and pipes laid; (ii) similar applications for the same use were approved in the surrounding areas and hence approving the subject application will not deviate from the planning intention of the “GB” zone; (iii) the actual land available within the “V” zone is less than PlanD’s estimate and is insufficient to meet the Small House demand of the indigenous villagers; and (iv) the subject application is different from another application for a free-standing Small House (No. A/NE-TK/792) which was considered by the RNTPC at the same meeting. Having considered the written representation, the planning considerations and assessments on the review application are detailed below.
- 7.3 The Site is currently partly paved with concrete and partly occupied by construction materials and tractors. While the proposed Small House is not incompatible with the surrounding areas which are predominantly rural in character with village houses and dense woodland to the east and north respectively, there is a general presumption against development within the “GB” zone. The proposed development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. The proposed development is considered not in line with TPG PG-No. 10 in that there are no exceptional circumstances and strong planning grounds to justify the proposed development. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.
- 7.4 The Site is the subject of two previous applications (No. A/NE-TK/243 and 476) approved by RNTPC before the formal adoption of a more cautious approach by the Board since August 2015 as set out in paragraph 4.7 above. These previous applications were submitted by different applicants from the subject application and the last planning permission granted under Application No.

A/NE-TK/476, which was granted in 2013, had already lapsed in 2021. According to Interim Criteria (d), application for NTEH/Small House with previous planning permission lapsed will be considered on its own merits. Sympathetic consideration may be given if there are specific circumstances to justify the cases, such as the site is an infill site among existing NTEHs/Small Houses, the processing of the Small House grant is already at an advance stage. In this regard, the Site could not be regarded as an infill site among existing NTEHs/Small Houses as there are vacant areas and approved Small House developments with works in progress surrounding the Site (**Plans R-3 and R-4**). DLO/TP of LandsD advises that there is no valid Small House grant application covering the Site. The Site is not the subject of Small House grant being processed at an advance stage. There are no specific circumstances to justify the case for sympathetic consideration under Interim Criteria (d).

- 7.5 Regarding Interim Criteria (a), the proposed Small House footprint falls entirely within the 'VE' of Lung Mei and Tai Mei Tuk. As far as the land availability within the "V" zone is concerned, the Board has formally adopted a more cautious approach in considering applications for Small House development since August 2015. Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications as provided by LandsD. Land available within the "V" zone of Lung Mei and Tai Mei Tuk (i.e. about 1.64ha of land or equivalent to about 65 Small House sites) (**Plan R-2b**) is capable of meeting the outstanding 39 Small House applications (37 at the time of consideration of the s.16 application). In view of the above, it is considered more appropriate to concentrate the proposed Small House developments within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. In this regard, sympathetic consideration could not be given as there is no general shortage of land for Small House developments within the "V" zone under the more cautious approach.
- 7.6 In response to the applicant's claim that the actual land available for Small House development within the subject "V" zone is less than that estimated by the PlanD due to various site constraints, it should be noted that the land occupied by road, existing and approved village houses, Tsz Tong, grave, steep slope, major tree clusters and stream buffer have already been deducted from the estimated area for Small House development. According to the established practice, though may not be readily available for development, areas currently occupied by private gardens, temporary structures or uses within the "V" zone are considered as a source of land supply which should also be included in assessing land availability within the "V" zone.
- 7.7 When the s.16 application was considered by the RNTPC on 15.3.2024, there were 20 similar approved applications located in close proximity to the Site falling within/partly within the same "GB" zone (**Plan R-2a**). 17 applications were approved by the RNTPC before August 2015 mainly on considerations as stated in paragraph 4.10 above. The other three applications (No. A/NE-TK/580, 618 and 664) with previous planning permission lapsed were approved by the RNTPC between 2016 and 2019 after the Board's formal adoption of a more cautious approach. The site of Application No. A/NE-TK/580 was situated in between two village houses and about 83% of it falls within the "V" zone. This application was approved mainly on sympathetic consideration of being the

subject of a previously approved application submitted by the same applicant; being an infill development; complying with TPB-PG No. 10; and that the processing of the concerned Small House grant was at an advance stage. The sites of Applications No. A/NE-TK/618 and 664 situated entirely outside the “V” zone and were approved mainly on sympathetic consideration that they were the subject of previously approved applications submitted by the same applicant, and the processing of the relevant Small House grants was considered to be at an advance stage. The planning circumstances of the subject application are different from these approved applications as it is submitted by a different applicant from the previous application, and the Site is not an infill site among existing NTEHs/Small Houses as explained in paragraph 7.4 above. Sympathetic consideration given to the similar approved applications are not applicable to the subject application.

- 7.8 For the review application, relevant government departments have been further consulted and they maintained no objection to nor no adverse comment on the application.
- 7.9 Regarding the public comment objecting to the review application as detailed in paragraph 6 above, the planning assessments above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comment in paragraph 6 and given that there has been no material change in the planning circumstances since the consideration of the subject application by the RNTPC, PlanD maintains its preview view of not supporting the review application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from this planning intention; and
 - (b) land is still available within the “V” zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 12.7.2028, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The advisory clauses at **Annex F** are also suggested for Members’ reference.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available within the "V" zone of Lung Mei and Tai Mei Tuk for Small House development
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-TK/793
Annex B	Extract of minutes of the RNTPC meeting held on 15.3.2024
Annex C	Secretary of the Board's letter dated 5.4.2024
Annex D	Letter from the Applicant dated 24.4.2024
Annex E	Similar applications
Annex F	Recommended advisory clauses
Annex G	Public comment

**PLANNING DEPARTMENT
JULY 2024**